

analyzing presence of said marking elements at said catching section, whereby presence of said marking elements corresponds with presence of said detectable material.

### REMARKS

Claims 1-8 pending.

Claims 1 and 2 are withdrawn from consideration by the Examiner.

Claims 3-8 stand rejected.

Claims 3 and 8 are amended.

The claims are amended to more clearly define the subject matter of the present invention. No new matter is added. Support for the amendments is found in the original claims and specification.

### Claims Rejections - 35 USC 112

Claims 3-8 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

First, the Examiner rejects claims 3 and 8 as being vague and indefinite with respect to the description of the particles and marking elements because it is unclear what these two reagents are and how these two reagents relate to the detectable material.

Applicants have amended the claims to more clearly define the relationship between the reagents. Specifically, the particles are defined as particles which do not affect detection. Examples of such particles are provided in the various examples in the specification. The marking elements can be any material which binds to the detectable material and has, in itself, a means for being detected. The binding relationship has been more clearly defined to read that the detectable material bonds with the marking elements and the particles to form the reaction product. It is the Applicant's position that one having ordinary skill in the art would have the knowledge to choose appropriate markers and particles based upon the detectable material sought to be detected.

The Examiner finds confusing the recitation of a reaction product being formed and retained in the catching section because it is unclear if the reaction product only forms in the presence of a detectable material.

It is the Applicant's position that the claims, as amended, make clear the apparatus and method of the instant invention. The detectable material bonds to the marking elements and particles to form a complex too large to be passed through the catching section. When the detectable material is not present in the sample, no such complex is formed. The inference that the marking elements may bond with the particles has been removed from the claims by the amendment, via said detectable material, at lines 15-16 of claim 3.

The Examiner objects to the recitation of a biological bond between the marking elements and the particles. Applicants have rendered this basis for rejection moot by the removal of the offensive word, "biological". In the instant claims, as

amended, any bond between the detectable material with both the marking elements and the particles will suffice for the apparatus and method to function. Applicants have provided sufficient disclosure, through specific examples in the specification, of types of bonds appropriate between the detectable material and the particles as well as between the detectable material and the marking elements.

The Examiner rejects claim 8 as being further confusing because it is unclear how the catching section is related to the other sections. The claim has been amended to clearly define the relationship between the catching section and the other sections.

Finally, the Examiner rejects claim 8 as not providing antecedent support for the marking elements contained in the reaction reagent section. Again, the claim has been amended to clearly define both marking elements and particles being present in the reaction reagent section.

For these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 3-8 as being rejected under 35 USC 112, second paragraph.

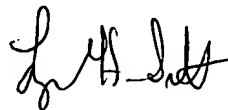
### **Conclusion**

In view of the foregoing, the claims are now believed to be in proper form for allowance. Early notice to that end is earnestly solicited.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 13-4550.

If it is believed that a telephone conference would be of value, the Examiner is strongly urged to call the undersigned at the number listed below.

Respectfully Submitted,



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